



6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R03-OAR-2018-0626; FRL-9994-42-Region 3]**

**Approval and Promulgation of Air Quality Implementation Plans; Delaware;  
Revision to the Regulatory Definition of a Volatile Organic Compound**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the State of Delaware. This revision pertains to amendments made to the definition of “volatile organic compound” (VOC) in the Delaware Administrative Code to conform with EPA’s regulatory definition of VOC. The EPA found that certain compounds have a negligible photochemical reactivity and therefore has exempted them from the regulatory definition of VOC in several rulemaking actions, as discussed below. This revision to the Delaware SIP requested the exemption of these compounds from the regulatory definition of VOC to match the actions EPA has taken. The revision also requested minor changes to the format of some of the chemical formulas for VOCs that are already excluded from the definition of VOC in the Delaware SIP. EPA is approving these revisions to update the definition of VOC in the Delaware SIP under the Clean Air Act (CAA).

**DATES:** This final rule is effective on [insert date 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA-

R03-OAR-2018-0626. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the “For Further Information Contact” section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Gaige, Air Quality Analysis Branch (3AD40), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5676. Ms. Gaige can also be reached via electronic mail at [gaige.elizabeth@epa.gov](mailto:gaige.elizabeth@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

VOCs are organic compounds of carbon that, in the presence of sunlight, react with sources of oxygen molecules, such as nitrogen oxides (NO<sub>x</sub>) and carbon monoxide (CO), in the atmosphere to produce tropospheric ozone, commonly known as smog. Common sources that may emit VOCs include paints, coatings, housekeeping and maintenance products, and building and furnishing materials. Outdoor emissions of VOCs are regulated by EPA primarily to prevent the formation of ozone.

VOCs have different levels of volatility, depending on the compound, and react at different rates to produce varying amounts of ozone. VOCs that are non-reactive or of negligible reactivity to

form ozone react slowly and/or form less ozone; therefore, reducing their emissions has limited effects on local or regional ozone pollution. Section 302(s) of the CAA specifies that EPA has the authority to define the meaning of VOC and what compounds shall be treated as VOCs for regulatory purposes. It is EPA's policy that organic compounds with a negligible level of reactivity should be excluded from the regulatory definition of VOC in order to focus control efforts on compounds that significantly affect ozone concentrations. EPA uses the reactivity of ethane as the threshold for determining whether a compound has negligible reactivity.

Compounds that are less reactive than, or equally reactive to, ethane under certain assumed conditions may be deemed negligibly reactive and, therefore, suitable for exemption by EPA from the regulatory definition of VOC. The policy of excluding negligibly reactive compounds from the regulatory definition of VOC was first laid out in the "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977) and was supplemented subsequently with the "Interim Guidance on Control of Volatile Organic Compounds in Ozone State Implementation Plans" (70 FR 54046, September 13, 2005). The regulatory definition of VOC as well as a list of compounds that are designated by EPA as negligibly reactive can be found at 40 CFR 51.100(s).

On September 30, 1999, EPA revised the regulatory definition of VOC in 40 CFR 51.100(s) to exclude t-butyl acetate (also known as tertiary butyl acetate or TBAC) from the definition of VOC for purposes of VOC emissions limitations or VOC content requirements. *See* 64 FR 52731.<sup>1</sup>

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<sup>1</sup> EPA's September 30, 1999 final rule continued to define TBAC as a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements that apply to VOC. On February 25, 2016, EPA revised the regulatory definition of VOC under 40 CFR 51.100(s) to remove the recordkeeping and reporting requirements for TBAC (81 FR 9341). EPA's rationale for this action is explained in

On November 29, 2004 (69 FR 69290), EPA promulgated a final rule revising the regulatory definition of VOC in 40 CFR 51.100(s) to add HFE-7000 (1,1,1,2,2,3,3-heptafluoro-3-methoxypropane), HFE-7500 [3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane], HFC-227ea (1,1,1,2,3,3,3-heptafluoropropane), and methyl formate to the list of compounds excluded from EPA's regulatory definition of VOC. On January 18, 2007 (72 FR 2193) and January 21, 2009 (74 FR 3437), EPA promulgated additional final rules revising the regulatory definition of VOC in 40 CFR 51.100(s) to add HFE-7300 (1,1,1,2,2,3,4,5,5,5-decafluoro-3-methoxy-4-trifluoromethyl-pentane), propylene carbonate, and dimethyl carbonate to the list of compounds excluded from the regulatory definition of VOC. These actions were based on EPA's consideration of the compounds' negligible reactivity and low contribution to ozone as well as the low likelihood of risk to human health or the environment. EPA's rationale for these actions is explained in more detail in the final rules for these actions.

## **II. Summary of SIP Revision and EPA Analysis**

In order to conform with EPA's current regulatory definition of VOC in 40 CFR 51.100(s), Delaware amended Section 2.0 of 7 DE Admin. Code 1101 – *Definitions and Administrative Principles* to add HFE-7000, HFE-7500, HFC-227ea, methyl formate, HFE-7300, propylene carbonate and dimethyl carbonate to a list of compounds excluded from the regulatory definition of VOC. Delaware also amended the definition of VOC in 7 DE Admin. Code 1101 to exclude TBAC from the definition of VOC for the purposes of VOC emissions limitations or VOC content requirements, but continued to define TBAC as a VOC for purposes of all recordkeeping, emissions reporting, photochemical dispersion modeling, and inventory requirements that apply

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more detail in the final rule for that action.

to VOC.<sup>2</sup> Delaware also made minor changes to the format of some of the chemical formulas for VOCs that were already excluded from the definition of VOC in 7 DE Admin Code 1101.<sup>3</sup> On May 25, 2018, the State of Delaware, through the Department of Natural Resources and Environmental Control (DNREC), formally submitted these amendments to 7 DE Admin. Code 1101 as a SIP revision.

On February 12, 2019 (84 FR 3384), EPA published a notice of proposed rulemaking (NPRM) for the State of Delaware. In the NPRM, EPA proposed approval of updates to the regulatory definition of VOC. EPA's rationale for the proposed action is discussed in the NPRM and will not be restated here.

EPA received one comment supporting EPA's NPRM approval of the SIP and suggesting that EPA adopt a new nomenclature for VOCs. EPA thanks the commenter but notes that the renaming of VOCs was outside of the scope of EPA's proposal.

### **III. Final Action**

EPA is approving updates to the regulatory definition of VOC in Section 2.0 of 7 DE Admin. Code 1101, submitted on May 25, 2018 by DNREC, as a revision to the Delaware SIP, as the submission meets the requirements of CAA section 110.

### **IV. Incorporation by Reference**

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<sup>2</sup> As discussed previously, on February 25, 2016, EPA revised the regulatory definition of VOC under 40 CFR 51.100(s) to remove the recordkeeping and reporting requirements for TBAC (81 FR 9341). However, Delaware's May 25, 2018 SIP revision retains the recordkeeping and reporting requirements for TBAC as these updates were adopted August 14, 2009 and became effective September 10, 2009, which was prior to EPA's final rule removing the recordkeeping and reporting requirements for TBAC.

<sup>3</sup> The format of the chemical formulas for the following compounds were revised to incorporate subscripts: 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C<sub>4</sub>F<sub>9</sub>OCH<sub>3</sub>), 2-(difluoromethoxy methyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OCH<sub>3</sub>), 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C<sub>4</sub>F<sub>9</sub>OC<sub>2</sub>H<sub>5</sub>), and 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF<sub>3</sub>)<sub>2</sub>CFCF<sub>2</sub>OC<sub>2</sub>H<sub>5</sub>).

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the revisions to the definition of VOC in Section 2.0 of 7 DE Admin. Code 1101 discussed in Section II of this preamble. EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region III Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully Federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>4</sup>

## **V. Statutory and Executive Order Reviews**

### **A. General Requirements**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because

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<sup>4</sup> 62 FR 27968 (May 22, 1997).

SIP approvals are exempted under Executive Order 12866.

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country

located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

## **B. Submission to Congress and the Comptroller General**

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

## **C. Petitions for Judicial Review**

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be



filed, and shall not postpone the effectiveness of such rule or action. This action updating the regulatory definition of a VOC in the Delaware SIP may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 17, 2019.

Cosmo Servidio,  
Regional Administrator,  
Region III.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart I—Delaware**

2. In § 52.420, the table in paragraph (c) is amended under “1101 Definitions and Administrative Principles”, by adding a second “Section 2.0” after the existing entry for “Section 2.0, Definitions” to read as follows.

**§ 52.420 Identification of plan.**

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(c) \* \* \*

**EPA-APPROVED REGULATIONS AND STATUTES IN THE DELAWARE SIP**

<b>State regulation (7 DNREC 1100)</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Additional explanation</b>
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<b>1101 Definitions and Administrative Principles</b>				
Section 2.0	Definitions	9/10/09	<b><u>[Insert date of publication in the Federal Register, Insert Federal Register citation]</u></b>	Updated definition of Volatile Organic Compound.  Previous approval 8/11/2010
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